

STATE OF MICHIGAN
COURT OF APPEALS

KEITHIE MOTLEY,

Plaintiff-Appellee,

v

GENESYS REGIONAL MEDICAL CENTER,
GENESYS HEALTH SYSTEMS, and TARIK J.
WASFIE, M.D.,

Defendants-Appellants.

UNPUBLISHED

October 19, 2006

No. 261928

Genesee Circuit Court

LC No. 03-077896-NH

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. We review for an abuse of discretion a trial court's decision to decline to entertain motions filed after the deadline set forth in a scheduling order. *Kemerko Clawson, LLC v RxIV*, 269 Mich App 347, 349; 711 NW2d 801 (2005); see also *EDI Holdings LLC v Lear Corp*, 469 Mich 1021; 678 NW2d 440 (2004) (summarily reversing this Court's determination that the trial court abused its discretion by refusing to accept a brief filed after the deadline established by scheduling order).

I conclude that the trial court abused its discretion, after permitting the adjournment of the trial date and extending discovery, in failing to allow defendants to raise their statute of limitations defense. Contrary to the circumstances present in *Kemerko Clawson, supra*, and *EDI Holdings, supra*, the trial court's rigid enforcement of the scheduling order in this case comes at the expense of judicial economy. MCR 2.401(B)(2)(a)(ii) allows the trial court to enforce time constraints for the filing of motions when it "concludes that such an order would facilitate the progress of the case." However, the trial court's order in the present matter forces the case to proceed to trial, at which point defendants will presumably seek a directed verdict on the basis of the statute of limitations. Thus, the order merely forestalls the inevitable, wasting time and judicial resources. MCR 1.105 requires the judiciary to construe the court rules "to secure the just, speedy, and economical determination of every action." Moreover, strict enforcement of the scheduling order under the particular circumstances of this case contravenes the overriding directive to "facilitate the progress of the case." MCR 2.401(B)(2)(a)(ii). I would reverse and remand to allow defendants to raise the statute of limitations defense in a motion for summary disposition.

/s/ Kathleen Jansen

